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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/852,182	05/09/2001	John P. Hamman	Nut-0003	4884

7590
Gary J. Calton
5331 Landing Road
Elkridge, MD 21075

06/04/2007

EXAMINER

ROBERTS, LEZAH

ART UNIT	PAPER NUMBER
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1614

MAIL DATE	DELIVERY MODE
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06/04/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/852,182

Applicant(s)

HAMMAN ET AL.

Examiner

Lezah W. Roberts

Art Unit

1614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 March 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f)..
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

This Office Action is in response to the Amendment filed March 12, 2007. All previous rejections have been withdrawn unless stated below.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims

Claim Rejections - 35 USC § 102 – Anticipation (Previous Rejection)

Claims 1-5, 8-9, 11-23, 26-27 and 29-36 are rejected under 35 U.S.C. 102(e) as being anticipated by Ojima et al. (US 7,029,717). The rejection is maintained.

Applicant argues in every example the product of Ojima does not use sucralose but a reaction product created when the purine base (or other product) is heated with sucralose for a period of 1hr at 100°C to 150°C. The resulting compound is not sucralose itself but a reaction mixture. Thus sucralose is not present for taste masking purposes in the compounds of the reference. The proteins and amino acids are also not present in the tasted material since they have been reacted with an excess of sucralose to form the reaction product, which gives the superior sweetness and intensity, illustrated by the examples. This argument is not persuasive.

The reference discloses it is sufficient that the substances such as protein hydrolysates and amino acids coexist with sucralose (col. 3, lines 9-15). This is interpreted to mean the components are in the same compositions and are not reacted

with one another as Applicant argues. Furthermore it appears the reference heats the compositions to test thermal stability of the sucralose when mixed with the substances. This is done to ensure the compositions will have the sweetness qualities when used in hard candies, which are made at high temperatures (col. 13). There are several methods disclosed for making the compositions including blending a powder of sucralose with a powder of substance to give a powdery mixture, the method of spraying a powder or granulation of sucralose with a solution of a substance, the method of mix-dispersing sucralose and said substance in a liquid medium to prepare a slurry and extruding the dispersion to prepare a granulation, and the method of dissolving sucralose and said substance together and drying the solution. The drying can be effected by any desired method. These methods all result in a combination of sucralose and an amino acid or protein hydrolysate. Even if the compositions are heated to change their chemical structure, the fact remains that the compositions were made before this occurred therefore encompassing the instant claims.

Claim Rejections - 35 USC § 102 – Anticipation (New Rejection)

Claims 1-3, 5-6, 19-21 and 23-24 are rejected under 35 U.S.C. 102(e) as being anticipated by Grace et al. (US 6,426,077).

Grace et al. disclose food product compositions comprising carnitine and sucralose. Sucralose is a potent sweetener. Carnitine is a fat burner (col. 4, lines 55-67). In the examples sucralose comprises 0.09 g/oz. of the compositions, which calculates to about 0.3%, encompassing claims 2-3 and 20-21. The sucralose is used

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as a sweetener therefore it would mask bitter taste that were introduced by other components encompassing the method claims. The reference anticipates the instant claims insofar as it discloses a composition comprising sucralose and carnitine.

Claim Rejections - 35 USC § 103 – Obviousness (Previous Rejection)

1) Claims 7, 10, 25 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ojima et al. (US 7,029,717) in view of Newsholme et al. (US 5,639,731).

See Applicant's arguments above. In regards to Newsholme, Applicant argues one skilled in the art would have never used the compositions comprising sucralose in conjunction with the compositions of Newsholme. This argument is not persuasive.

Newsholme discloses the amino acids of the compositions have bitter taste and agents are added to mask these tastes. Ojima discloses sucralose may be used as a sweetener in beverages. The combination of a substance such as protein hydrolysates or amino acids with sucralose improves the stability of sucralose and also does not interfere with its sweet taste. It would have been obvious to add sucralose to the compositions of Newsholme because it has been shown by Ojima that compositions have a sweet taste even in the presence of amino acids. Therefore the sucralose is able to mask the bitter taste of the amino acids as well as sweeten the beverage.

2) Claims 1-5, 8-9, 11-23, 26-27 and 29-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Daravingas et al. (US 6,235,320) in view of Cherukuri et al. (US 5,013,716). The rejection is maintained.

Applicant does not appear to specifically address the rejection of Daravingas et al. in view of Cherukuri et al. Specifically Applicant does not address Daravingas et al. Daravingas is summarized but Applicant does not argue why the instant claims are distinct from the reference or combination of references.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Claims 1-36 are rejected.

No claims allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lezah W. Roberts whose telephone number is 571-272-1071. The examiner can normally be reached on 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin H. Marschel can be reached on 571-272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Lezah Roberts
Patent Examiner
Art Unit 1614



Frederick Krass
Primary Examiner
Art Unit 1614

